

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) JASON DURNING, as Personal)	
Representative of the Estate of)	
DOUGLAS DURNING, deceased,)	
)	
Plaintiff,)	
)	
v.)	Case No.: <u>CIV-21-37-J</u>
)	(REMOVED FROM CANADIAN
(1) HONEYWELL INTERNATIONAL, INC.)		COUNTY Case No. CJ-2020-606
(2) JOHN DOES 1-5,)	Judge Paul Hesse)
Defendants.)	

**DEFENDANT HONEYWELL INTERNATIONAL INC.’S
NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Honeywell International Inc. (“Honeywell”) removes the state court action styled as *Jason Durning, as Personal Representative of the Estate of Douglas Durning, deceased, v. Honeywell International, Inc., and John Does 1-5*, Case No. CJ 2020 606, currently pending in the District Court of Canadian County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma. This case is properly removable on the basis of diversity jurisdiction under 28 U.S.C. §§ 1441 and 1446.

I. PROCEDURAL HISTORY

1. Plaintiff is the personal representative of the estate of Douglas Durning, deceased. On December 16, 2020, Plaintiff filed this lawsuit on behalf of Durning’s estate after he died piloting an aircraft in March 2019. *See* Ex. A ¶¶ 6–12. The complaint is attached as **Exhibit 1** and the State Court Docket is attached as **Exhibit 2**.

2. The complaint alleges that Durning was piloting a Westwind 1124 aircraft on March 18, 2019 when it malfunctioned and crashed as it approached Oklahoma's Sundance Airport. *Id.* Plaintiff alleges that the crash was the result of a defect in the design or production of the engine or engine components. *Id.*

3. Plaintiff has not yet served any copies of process, pleadings, and orders on Honeywell in the state court action.

4. Venue is proper for removal to this Court because it is the U.S. District Court for the district and division embracing the place where the state action was pending. *See* 28 U.S.C. § 1441(a).

II. GROUNDS FOR REMOVAL

5. The U.S. district courts have original jurisdiction of all civil actions where the matter in controversy exceeds \$75,000 and there is complete diversity of citizenship between plaintiffs and defendants. 28 U.S.C. § 1332(a).

6. According to the complaint, “[t]he amount in controversy, exclusive of costs and interests, is in excess of \$75,000.” Ex. A ¶ 24. Plaintiff seeks damages in excess of \$75,000 on each of three claims for relief, totaling over \$225,000. *Id.* ¶¶ 30, 77, 41. Therefore, the amount-in-controversy requirement is satisfied.

7. There is also complete diversity of citizenship. Plaintiff alleges he is acting in the capacity of the legal representative of the Estate of Douglas Durning, deceased, in bringing this action, and on information and belief Douglas Durning was a citizen of the state of Oklahoma prior to and at the time of his death, as a result of which Plaintiff is deemed to be a citizen of the state of Oklahoma pursuant to 28 U.S.C. § 1332(c)(2) for

purposes of determining the diversity of citizenship of the parties hereto. Honeywell is a Delaware corporation with its corporate headquarters in North Carolina, and therefore a citizen of both Delaware and North Carolina. *Id.* ¶¶ 2. Under § 1446(b), the citizenship of defendants sued under fictitious names should be disregarded in determining whether a civil action is removable on the basis of diversity jurisdiction. 28 U.S.C. § 1441(b)(1); *Australian Gold Inc. v. Hatfield*, 436 F.3d 1228 (10th Cir. 2006). Therefore, Plaintiff's inclusion of several "John Doe" defendants has no bearing on the citizenship analysis, and there is complete diversity between plaintiffs and defendants.

III. REMOVAL IS TIMELY

8. Honeywell first received notice of Plaintiff's complaint on December 17, 2020 via the Courthouse News Service. This notice of removal is properly filed within the 30-day timeframe specified in 28 U.S.C. § 1446.

IV. ALL OTHER PROCEDURAL REQUIREMENTS HAVE BEEN MET

9. In accordance with 28 U.S.C. § 1446(d), Honeywell will promptly file written notice of this removal and a copy of the Notice of Removal with the clerk of the state court in which this action is currently pending. Honeywell will also serve written notice of the filing of this Notice of Removal on counsel for plaintiff.

10. By filing this Notice of Removal, Honeywell does not waive any rights, privileges, or defenses, including defenses related to personal jurisdiction, and does not concede that this is an appropriate or convenient forum for resolution of these claims.

WHEREFORE, Honeywell respectfully removes the state court action styled as *Jason Durning, as Personal Representative of the Estate of Douglas Durning, deceased, v.*

Honeywell International, Inc., and John Does 1-5, Case No. CJ 2020 606, currently pending in the District Court of Canadian County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma under 28 U.S.C. § 1441 and 1446.

Respectfully submitted,

s/ Phil R. Richards

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**ATTORNEYS FOR DEFENDANT
HONEYWELL INTERNATIONAL, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January 2021, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing, and a true and correct copy of the above and foregoing instrument was mailed first class, U.S. mail, proper postage prepaid thereon to the following:

Conner L. Helms, Esq.
HELMS LAW FIRM
One N.E. Second Street, Suite 202
Oklahoma City, Oklahoma 73104

ATTORNEY FOR PLAINTIFF

Additionally, pursuant to 28 U.S.C. § 1446(d), true and correct copies of the Notice of Removal were mailed to the following:

Marie Hirst
Canadian County Court Clerk
301 N. Choctaw
PO Box 730
El Reno, Oklahoma 73036

s/ Phil R. Richards